

May 19, 2006

Karen Dinicola
Water Quality Program
Washington State Department of Ecology
P.O. Box 47696
Olympia, WA 98504

Re: Formal Draft Phase II Municipal Stormwater Permit and Fact Sheet for
Eastern Washington

Dear Karen:

Included please find the City of Spokane's comments on the formal draft Permit and Fact Sheet. I appreciated the opportunity to comment on the preliminary drafts last year and see the current draft has addressed some of our issues.

In my cover letter regarding our preliminary permit comments last October, I wrote of the City's commitment to water quality as evidenced by years of program implementation and current planned expenditures for future improvements. I will not reiterate those points here except to stress that we must manage stormwater as cost effectively as possible, seeking practical means of protecting water quality and efficiently meeting the regulations.

I will be glad to talk with you about any of our comments or provide more information. I can be reached at (509) 625-7929 and lhendron@pokane-city.org.

Sincerely,

Lars H. Hendron, P.E.
Principal Engineer – Wastewater Management

June 22, 2006

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cc: Dale Arnold; Director – Wastewater Management
Tom Arnold; Director – Engineering Services
Brad Blegen; Director – Water & Hydroelectric Services
Dennis Hein; Director – Solid Waste Management
Scott Egger; Director – Streets
Don Roberson; Director – Fleet Services
Mike Stone; Director – Parks & Recreation
Joe Wzner; Building Official
Lloyd Brewer; Manager – Environmental Programs
John Mercer; Manager – Capital Programs
Bill Peacock; Principal Engineer – Wastewater Management
Gary Kaesenecker; Operations Supervisor – Wastewater Management
Robert Beaumier; Assistant City Attorney
Craig Trueblood; Preston Gates & Ellis (Seattle)
Janet Davey; Wastewater Management Files

City of Spokane GENERAL COMMENTS

Scope and Structure of Proposed Permit. Rather than implementing the general outline approach for Phase II permitting contemplated by the U.S. Environmental Protection Agency ("EPA") in 40 C.F.R. 122.30 through 40 C.F.R. 122.37 (the "Phase II regulations"), the draft Permit imposes explicit requirements on permittees, including requirements to implement specific best management practices ("BMPs"). While acknowledging that this approach provides "less flexibility to tailor local stormwater programs to reflect local priorities and needs," Ecology maintains that its approach is necessary to avoid problems raised by the Ninth Circuit Court of Appeals' determination that the Phase II regulations did not implement the required permitting authority review of municipal stormwater programs. See Formal Public Comment Draft Fact Sheet, at 15; see also *Environmental Defense Center, Inc. v. U.S. Environmental Protection Agency*, 344 F.3d 832 (9th Cir. 2003). However, this approach seems to be an over-reaction by Ecology and runs directly counter to the intent of the Phase II regulations, which is intended to allow permittees to design most aspects of their own programs in order to meet the minimum control measures set out in the regulations. Moreover, many of the deadlines associated with the Permit's explicit requirements are unrealistic given the level of detail Ecology is requiring for City programs and procedures to minimize stormwater pollution, the size and complexity of the City's MS4, and the City's limited resources. The City strongly recommends that Ecology reevaluate the Permit's approach in light of the economic and practical realities facing the local jurisdictions that will be subject to the Permit's requirements in Eastern Washington.

Intersection with the Construction Stormwater General Permit. The City understands that the Phase II regulations require permittees to develop a program to control construction site stormwater runoff. However, Ecology has chosen to implement requirements in excess of the minimum control measures set out in 40 C.F.R. 122.34(b)(4)(ii), including a requirement for the local jurisdiction to review the stormwater pollution prevention plan for every construction site in the City. In conjunction with several other Permit requirements, this requirement appears designed to ensure that all local jurisdictions subject to the Permit will be "qualified local programs" for the purposes of the Construction Stormwater General Permit. This, in turn, would shift Ecology's responsibility for regulating many construction sites to local jurisdictions. The City simply does not have the resources to administer the construction stormwater permit for Ecology. In keeping with the guidance set out in 40 C.F.R. 122.34(e)(2), the Permit should not add additional requirements to the minimum control measures without the agreement of the local

jurisdiction. Ecology should remove the requirement to require construction stormwater pollution prevention plans, as well as other requirements for the control of stormwater runoff that exceed the minimum control measures, from the Permit's scope.

Discharges to Groundwater. The EPA's Phase II regulations do not require Ecology to regulate discharges to groundwater. However, Ecology has added State requirements to the Permit to protect groundwater. This is not part of the legal responsibilities delegated to Ecology under the federal Clean Water Act, but it is an important policy decision by the agency and needs to be very carefully considered. Requiring cities and counties to regulate stormwater discharges to groundwater increases the complexity of compliance with the Permit, may increase a municipalities' liability for groundwater discharges by third-parties, and will increase the costs of complying with the Permit. Given that the costs of compliance will already challenge many communities' stretched budgets, Ecology should remove groundwater discharges from the Permit's scope.

Fire Fighting Discharges. Ecology maintains that only discharges from "emergency fire fighting activities" are authorized by 40 C.F.R. 122.34(b)(3)(iii). However, 40 C.F.R. 122.34(b)(3)(iii) does not use the word "emergency" in connection with fire fighting activities. Ecology should remove the word "emergency" and authorize discharges from all fire fighting activities under the Permit, including fire fighting training exercises.

City of Spokane SPECIFIC COMMENTS

RE: SPECIAL CONDITIONS

Page 1, line 9 – some actions and BMPs pertaining to stormwater management are not necessarily applicable in combined sewer areas. Please modify language to allow flexibility in this regard.

Page 1, line 34 – consider identifying airports as a specific example.

Page 5, line 22 – to clarify intent, change "...under the federal Clean Water Act..." to "...under federal rules..." because UC authority is in the Safe Drinking Water Act.

Page 7, line 11 – “~~SWMP~~” refers locally to Spokane’s regional “Solid Waste Management Plan.” This usage may be common elsewhere. To prevent confusion, and because “stormwater” is one word, recommend Ecology use “SMP” as the acronym for “Stormwater Management Plan.”

Page 8, line 12 – delete requirement to track costs, or reduce requirement to pertain only to that tracking which Permittee would normally do for its own internal purposes. Permittees’ additional efforts to track costs consistently and cumulatively across numerous departments is a costly and cumbersome task and does not protect or improve water quality. Reporting Permittees’ activities and implementation provides the measure of effectiveness.

Page 8, line 12 – if cost tracking requirement is not deleted, clarify that cost information will not be used by Ecology as a measure of a Permittee’s performance or compliance. Permittees, over time, will tend to become more efficient at implementing their stormwater programs, and circumstances vary widely across Eastern Washington and between various Permittees, making cost tracking a questionable measure of MEP.

Page 11, lines 16-21 – re: discharges from potable sources: Permittee should have flexibility to determine concentrations and locations where such discharges may enter its MS4 since the issue is the chlorine concentration at end-of-pipe. Concentrations introduced at the upper end of the system tend to diminish as the flow proceeds downstream

Page 11, line 23 – request Ecology change “reduced” to “controlled” because the former implies continuous reduction zero whereas “controlled” better fits into a management strategy.

Page 11, lines 26-29 – re: discharges from swimming pools, not including cleaning wastewater and filter backwash: Permittee should have flexibility to determine the extent to which such discharge needs to be controlled. Permittee’s use of sound catch basin BMPs can address sediment issue. Chlorine issue can be addressed similar to potable water comment, above.

Page 11, lines 36-38 – re: use of water for dust control and street washing, Spokane is in a federal Air Quality Non-attainment Area, and thus face air quality problems (PM10 and PM2.5) that will require balancing street cleaning water use in order to best meet both air quality and water quality standards. Permittees will tend to minimize water use for economic reasons, so flexibility to determine the proper water usage balance is essential. Permittee’s use of sound catch basin BMPs can address the sediment issue.

Page 11, lines 38-39 – again, the air quality issues in Spokane will require balancing street cleaning water use in order to meet both air quality and water quality standards. Permittee should be allowed flexibility to implement BMPs that best suit its locale and circumstances, including a combination of BMPs involving catch basins, street cleaning, and control of wheel tracking to achieve the goal.

Page 12, lines 24-29 – the City of Spokane only has two receiving water bodies!

Page 20, line 22 – clarification: change “Structural BMPs shall be inspected ...” to “Structural BMPs authorized to discharge to the MS4 shall be inspected ...”

Page 33, lines 1-3 – Ecology should allow Counties to recommend the three most representative locations, especially since the ratios of industrial and commercial land use varies considerably from one County to another.

Page 33, line 4 – correction: change “two” to “three” or delete one of the land uses that follow

Page 33, lines 6-8 – Ecology should allow Cities to recommend the three most representative locations, especially since the ratios of industrial and commercial land use varies considerably from one City to another. City of Spokane has very little industrial land use and may best sample (1) low density residential, (2) high density residential, and (3) an area of mixed commercial and industrial that is representative of those two land uses city-wide.

Page 33, line 37 – missing word? “...plan containing for...”

Page 33, line – change “...statement of the problem..” to “...description of the issue...”

Page 34, line 18 – list is not exhaustive. Permittee should be allowed to choose from BMPs it uses.

Page 34, lines 19-27 – list should also include (1) Bio-Infiltration Swale and (2) Catch Basin

Page 34, lines 32-37 -- list should also include (1) Catch Basin

RE: GENERAL CONDITIONS

Page 49, line 30 – “~~SWM~~” refers locally to Spokane’s regional “Solid Waste Management Plan.” This usage may be common elsewhere. To prevent confusion, and because “stormwater” is one word, recommend Ecology use “SMP” as the acronym for “Stormwater Management Plan.”

RE: APPENDICES

Appendix 3, page 2-11 – recommend questions be listed in the same relative order for each year.

RE: FACT SHEET

General – “~~SWM~~” refers locally to Spokane’s regional “Solid Waste Management Plan.” This usage may be common elsewhere. To prevent confusion, and because “stormwater” is one word, recommend Ecology use “SMP” as the acronym for “Stormwater Management Plan.”

Page 20, S2.A 4 – to clarify intent, change “...under the federal Clean Water Act...” to “...under federal rules...” because UC authority is in the Safe Drinking Water Act.
